

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
vs.)	No. 3:13-CR-466-M(5)-BH
)	
JORGE CALDERON-CANAS,)	
Defendant.)	Referred to U.S. Magistrate Judge

FINDINGS, CONCLUSIONS, AND RECOMMENDATION

By electronic order of January 9, 2019 (doc. 388), before the Court is the defendant's *Request to Take Judicial Notice of Adjudicative Facts Pursuance to (Fed. Evid. R. 201(c)(2)) and for Evidence Rule 201(e) Hearing on Matter of Judicial Notice (Fed. R. Evid. 201(e))* (sic), received on December 21, 2018 (doc. 387). Based on the relevant findings and applicable law, the filing is construed as a motion, and it should be **DENIED**.

I. BACKGROUND

Jorge Calderon-Canas (Defendant) pleaded guilty to one count of conspiracy to distribute a schedule II controlled substance in violation of 21 U.S.C. § 846. Because Defendant had two prior Texas felony convictions for possession with intent to deliver a controlled substance that were considered to be controlled substance offenses, he was found to be a career offender under USSG § 4B1.1(b). (See doc. 260-1 at 10, ¶ 39, at 11, ¶¶ 44-45, at 12, ¶ 50.) On May 14, 2015, he was sentenced to 156 months' imprisonment. (See doc. 335.)

Defendant contends that the career offender designation was erroneous in light of *United States v. Tanksley*, 854 F.3d 284 (5th Cir. 2017), and he seek an evidentiary hearing to "assess the sentence that now presents an error." (See doc. 387 at 2.) He asks the Court to take judicial notice under Fed. R. Evid. 201 that there is a lack of evidence to support the career offender designation and that it "adjudicate the facts presented accordingly." (See *id.* at 3.)

II. ANALYSIS

Rule 201 of the Federal Rules of Evidence provides that “a court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”

Because Defendant does not seek judicial notice of a fact, Rule 201 does not apply to his request. His request for a legal determination regarding his status as a career offender challenges his sentence. The primary means of collaterally attacking a federal conviction and sentence is under 28 U.S.C. § 2255. *Cox v. Warden, Federal Detention Center*, 911 F.2d 1111, 1113 (5th Cir. 1990). “Relief under this section is warranted for any error that ‘occurred at or prior to sentencing.’” *Id.* (quoting *United States v. Flores*, 616 F.2d 840, 842 (5th Cir. 1980)).

Because Defendant already has a § 2255 motion pending in No. 3:16-CV-1764-M in which he challenges the career offender enhancement, his motion should not be construed as a motion to vacate under 28 U.S.C. § 2255. Additionally, he is represented by counsel in that case. He has “a right to represent himself or to be represented by counsel, but he has no right to a hybrid representation partly by himself and partly by counsel” in that case. *Lee v. Alabama*, 406 F.2d 466, 469 (5th Cir. 1968). His motion should therefore not be filed in the § 2255 case.

III. RECOMMENDATION

The motion (doc. 387) should be **DENIED**.

SIGNED this 5th day of February, 2019.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE